

REED SMITH LLP

Formed in the State of Delaware

Diane A. Bettino, Esq.

David G. Murphy, Esq.

506 Carnegie Center – Suite 300

Princeton, New Jersey 08540

Tel. (609) 514-5947

Fax (609) 951-0824

Attorneys for Defendant Truist Bank

(improperly named Truist d/b/a or f/k/a Branch Banking and Trust Company)

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

JOHN GERICKE, Individually and on behalf of All Individuals similarly situated,

Plaintiffs,

v.

TRUIST D/B/A OR F/K/A BRANCH BANKING AND TRUST COMPANY and JOHN DOES 1-10,

Defendants.

Civil Action No. 1:20-cv-03053

Motion Returnable: August 17, 2020

**CERTIFICATION OF DIANE
A. BETTINO, ESQ. IN
SUPPORT OF MOTION TO
DISMISS**

I, Diane A. Bettino, Esq., do hereby certify as follows:

1. I am an attorney-at-law in the State of New Jersey and a partner with the law firm of Reed Smith LLP, counsel to Defendant Truist Bank (improperly named Truist d/b/a or f/k/a Branch Banking and Trust Company) (“Truist Bank”)

in the above-captioned action. As such, I am fully familiar with the facts set forth herein.

2. I make this Certification in support of Truist Bank's Motion to Dismiss Plaintiff John Gericke's ("Plaintiff") putative class action complaint with prejudice.

3. A copy of the publicly-available February 17, 2012 Order granting Susquehanna Bank's Motion for Final Judgment by Default against John Gericke and Barbara Gericke, and entering final judgment in the amount of \$244,248.49, in the matter captioned *Susquehanna Bank v. John Gericke and Barbara Gericke*, Superior Court of New Jersey, Gloucester County, Law Division, docket number L-1618-11, is attached hereto as **Exhibit 1**.

4. A copy of the publicly-available March 12, 2012 Writ of Execution attaching Susquehanna Bank's February 17, 2012 final judgment to the "real property . . . belonging to the judgment debtor(s)," including Plaintiff's property located at 248 Hampshire Drive, Deptford, New Jersey (the "Property"), is attached hereto as **Exhibit 2**.

5. A copy of the Judgment Search Details screen for Susquehanna Bank's February 17, 2012 final judgment, which was indexed under judgment number J-062680-12, and is publicly-available on the NJ Judiciary 2018's website, is attached hereto as **Exhibit 3**.

6. A copy of the State of New Jersey Department of Banking and Insurance (“DoBI”) list of New Jersey Bank Mergers (as of 6/5/2020), detailing the August 1, 2015 merger of Susquehanna Bank in Branch Banking and Trust Company (“BB&T”), which is publicly-available on DoBI’s website, is attached hereto as **Exhibit 4**.

7. A copy of the Articles of Amendment of BB&T Corporation, setting forth the merger of BB&T into Truist Financial Corporation effective December 7, 2019, which is publicly available on the Securities and Exchange Commission’s website, is attached hereto as **Exhibit 5**.

8. A true and correct copy of Defendant Truist Bank’s Fed. R. Civ. P. 7.1 Corporate Disclosure Statement, filed in this matter on March 19, 2020, is attached hereto as **Exhibit 6**.

9. A true and correct copy of the Notice of Removal filed by Truist Bank in this matter on March 19, 2020 is attached in its entirety here as **Exhibit 7**. The Notice of Removal contains the following subparts:

- a. Notice of Removal – *DE 1*.
- b. Certification of Diane A. Bettino, Esq. – *DE 1-1*.
 - i. Exhibit A – Complaint filed by Plaintiff on January 27, 2020 in the Superior Court of New Jersey, Law Division, Civil Part, Gloucester County – *DE 1-2*.
 1. Complaint Exhibit 1 – 2018 Form 1099-C to John Gericke.

2. Complaint Exhibit 2 – August 16, 2018 Letter from John Prebich to Debbie Austin.
 3. Complaint Exhibit 3 – February 19, 2019 Letter from John Prebich to Special Assets Recovery.
 4. Complaint Exhibit 4 – April 26, 2019 Letter from Christian Wober to the Law Offices of Lee Perlman.
 5. Complaint Exhibit 5 – April 30, 2019 Letter from John Prebich to Special Assets Recovery, with enclosures.
 6. Complaint Exhibit 6 – June 3, 2019 Letter from John Prebich to Christopher L. Henson.
 7. Complaint Exhibit 7 – June 26, 2019 Letter from John Prebich to Christian Wober.
 8. Complaint Exhibit 8 – “Cash Receipt” dated 7/31/2018.
 9. Complaint Exhibit 9 – December 2, 2019 IRS Notice to John and Barbara Gericke.
- c. Civil Cover Sheet – *DE 1-3*.
 - d. Certification of Service. – *DE 1-4*.
10. A copy of the 2018 Instructions for Forms 1099-A and 1099-C, Internal Revenue Service, which is available at <https://www.irs.gov/pub/irs-prior/i1099ac--2018.pdf>, is attached hereto as **Exhibit 8**.
 11. A copy of the 2017 Instructions for Forms 1099-A and 1099-C, Internal Revenue Service, which is available at <https://www.irs.gov/pub/irs-prior/i1099ac--2017.pdf>, is attached hereto as **Exhibit 9**.

12. A copy of the 2016 Instructions for Forms 1099-A and 1099-C, Internal Revenue Service, which is available at <https://www.irs.gov/pub/irs-prior/i1099ac--2016.pdf>, is attached hereto as **Exhibit 10**.

13. A copy of the United State District Court for the District of Massachusetts' unpublished decision in *Wells Fargo Bank, N.A. v. Fraze*, No. 19-10499-GAO, 2020 WL 1615866 (D. Mass Apr. 2, 2020), is attached hereto as **Exhibit 11**.

14. A copy of this Court's unpublished order in *Walker v. Ocwen Loan Servicing, LLC*, No. 2:16-cv-9157 (D.N.J. Mar. 14, 2018), is attached hereto as **Exhibit 12**.

15. A copy of this Court's unpublished decision in *Walker v. Ocwen Loan Servicing, LLC*, No. 2:16-cv-9157, 2017 WL 2957933 (D.N.J. July 11, 2017), is attached hereto as **Exhibit 13**.

16. A copy of the United States Bankruptcy Court for the District of Kansas' unpublished order granting motion to dismiss in *In re Ledin*, No. 14-12347, 2015 WL 1569742 (Bankr. D. Kan. Mar. 31, 2015), is attached hereto as **Exhibit 14**.

17. A copy of the Internal Revenue Service Information Letter 2005-0207, 2005 WL 3561135 (Oct. 7, 2005), is attached hereto as **Exhibit 15**.

18. A copy of the relevant pages from the *National Taxpayer Advocate's 2019 Annual Report to Congress*, IRS Pub. 2104, 2019 WL 88838, at 104 (Dec. 2019), is attached hereto as **Exhibit 16**.

19. A copy of the United States District Court for the District of Kansas's awaiting-publication decision in *Robbins v. Dyck O'Neal, Inc.*, __ F. Supp. 3d __, 2020 WL 1320725 (D. Kan. Mar. 20, 2020), is attached hereto as **Exhibit 17**.

20. A copy of this Court's unpublished opinion in *Friest v. Luxottica Group S.P.A.*, No. 2:16-cv-3327-SDW-LDW, 2016 WL 7668453 (D.N.J. Dec. 16, 2016), is attached hereto as **Exhibit 18**.

21. A copy of this Court's unpublished opinion in *Cannon v. Ashburn Corp.*, No. 16-1452 (RMB/AMD), 2016 WL 7130913 (D.N.J. Dec. 7, 2016), is attached hereto as **Exhibit 19**.

22. A copy of this Court's unpublished opinion in *Truglio v. Planet Fitness, Inc.*, No. 15-7959 (FLW) (LHG), 2016 WL 4084030 (D.N.J. July 28, 2016), is attached hereto as **Exhibit 20**.

I certify under penalty of perjury that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

REED SMITH LLP

/s/ *Diane A. Bettino*
Diane A. Bettino, Esquire

Dated: July 13, 2020